

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

PHILIP SIMS,

Plaintiff,

vs.

PROGRESSIVE DIRECT  
INSURANCE COMPANY,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 4:09-cv-01213-CDP

**TRIAL BRIEF**

1. Proof of compromise or settlement with a third party is inadmissible to prove validity or invalidity of a claim. A.G. Edwards v. Drew, 978 S.W.2d 386, 392 (Mo. App. 1998).
2. Evidence of payment by Joiners insurance carrier is not probative or relevant and would be extremely prejudicial, because a jury would likely infer that the payment was an admission by Joiner both that he was negligent and that Plaintiff's damages exceeded the policy limits. Sladky v. Progressive, 2006 W.L. 2246427
3. An insurer is permitted to set off payments made to the Plaintiff, in either an uninsured or underinsured motorist situation. See Tatum v. Van Liner Ins. Co. of Fenton, MO, 104 F.3d 223 (8<sup>th</sup> Cir. 1997) and Addison v. State Farm Mut. Auto. Ins. Co., 932 S.W.2d 788 (Mo. App. E.D. 1996).

**/s/ Daniel E. Wilke**  
Daniel E. Wilke #5949  
Sean M. Flaherty #109901  
Attorneys for Defendant  
WILKE & WILKE, P.C.  
2708 Olive Street  
St. Louis, Missouri 63103  
314-371-0800  
Fax: 314-371-0900  
[wilke@wilkewilke.net](mailto:wilke@wilkewilke.net)

I hereby certify that on August 10, 2010, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Robert J. Albair  
Attorney at Law  
13421 Manchester Road, Suite 106  
St. Louis, MO 63131  
[r\\_albair@msn.com](mailto:r_albair@msn.com)  
ATTORNEY FOR PLAINTIFF

**/s/ Daniel E. Wilke**  
Daniel E. Wilke #5949  
Sean M. Flaherty #109901  
Attorney for Defendant  
WILKE & WILKE, P.C.  
2708 Olive Street  
St. Louis, Missouri 63103  
314-371-0800

SMF/mcb